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Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
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Copyright Royalty Board

In The Matter Of:

Determination of Rates and Terms for
Business Establishment Services

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: Docket No. 2007-1 CRB DTRA-BE
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MOTION OF XM SATELLITE RADIO TO FILE LATE PETITION TO PARTICIPATE

On January 5, 2007, the Copyright Royalty Judges published in the Federal Register an announcement of the commencement of the above-captioned proceeding to determine the reasonable rates and terms for the making of ephemeral recordings of sound recordings in furtherance of the exempt digital transmission of sound recordings by business establishments pursuant to 17 U.S.C. § 114(d)(1)(C)(iv). Determination of Rates and Terms for Business Establishment Services, 72 Fed. Reg. 583 (Jan. 5, 2007). The announcement instructed interested entities to file petitions to participate by February 5, 2007. XM Satellite Radio Inc. ("XM") hereby moves the Copyright Royalty Judges to accept its petition to participate, which is being filed one day later than the announced deadline.

Under 17 U.S.C. § 803(b)(1)(A)(ii), "the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements." XM mistakenly believed that the deadline for filing petitions to participate in the above-captioned proceeding was February 7, 2007, rather than February 5, and planned to file its petition accordingly. Only late in the day on February 5 did the error come to light, by which time it was

too late to process a check for the required filing fee and then file the petition on time with the Copyright Royalty Board.

Given that only one day has passed since that deadline, it appears unlikely that any other participant will suffer any prejudice whatsoever. In addition, since a deadline has yet to be set for the filing of written direct statements, XM's petition presumably is well within the statutory 90-day window.

Good cause and lack of prejudice having been shown, XM hereby moves the Board to accept its attached petition to participate.

Respectfully submitted,

Dated: February 6, 2007


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Petition to Participate in Docket No. 2007-1 CRB DTRA-BE

In accordance with 17 U.S.C. § 803(b)(1) and 37 CFR 251.45(a), the entity set forth herein files with the Copyright Royalty Board a notice stating the entity's intention to participate in the proceedings to establish reasonable rates and terms for the making of ephemeral recordings by entities that transmit performances of sound recordings to business establishments pursuant to 17 U.S.C. §§ 114(d)(1)(C)(iv) and 112(e). This Petition responds to the Copyright Royalty Board's notice announcing the commencement of the above-captioned proceeding and request for Petitions to Participate, 72 Fed. Reg. 584 (Jan. 5, 2007).

1. Name of Service(s): XM Satellite Radio Inc.
2. Mailing Address: 1500 Eckington Place NE
Washington, DC 20002-2194
3. Website Address of Service: www.xmradio.com

4. Interest In the Proceedings:

XM Satellite Radio Inc. ("XM") operates a service that transmits performances of sound recordings to business establishments pursuant to the limitations on exclusive rights specified by 17 U.S.C. §§ 114(d)(1)(C)(iv); in furtherance of that service, XM makes ephemeral recordings of sound recordings and is thus subject to the rates and terms for the making of ephemeral copies under § 112(e).

5. Officer or Authorized Representative of Service:

1. Name: R. Bruce Rich**
2. Title: Partner, Weil Gotshal & Manges LLP

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3. Address: 767 Fifth Ave., New York, NY 10153
4. Telephone No: (212) 310-8170
5. Facsimile No: (212) 310-8007
6. Date: 2/6/2007
7. Signature: R. Bruce Rich / Jr.

**As required by 37 C.F.R § 350.2, it is hereby affirmed that Mr. Rich is presently a member in good standing of the bar of New York State (N.Y. Bar No. 1304534).